



07-CV-05055-EXH

# Group Exhibit A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

THE CITY TACOMA, a municipal  
Corporation, of the State of Washington,

Plaintiff,

v.

CLARENDON AMERICA INSURANCE  
COMPANY, a Delaware corporation,  
and SPECIALTY SURPLUS INSURANCE  
COMPANY, an Illinois corporation,

Defendants.

NO. 07-2-04167-8

INSURANCE COMMISSIONER'S  
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the Insurance Commissioner of the State of Washington has accepted service of

*Summons, Complaint, Order Setting Case Schedule*

in the above-mentioned matter on January 8, 2006, on behalf of

*Specialty Surplus Insurance Company*

an unauthorized foreign or alien insurer, and has forwarded a duplicate copy thereof to said insurance company pursuant to RCW 48.05.215 and 48.15.150. No entity with the name of Specialty Surplus Insurance Company has been issued a certificate of authority to transact insurance in the state of Washington, and the commissioner has made no determination as to whether the defendant has solicited or transacted insurance business in the state of Washington.

Receipt of the \$10 statutory service fee is acknowledged.

ISSUED AT OLYMPIA, WASHINGTON: January 8, 2006

Tracker ID 882

Certification No.: 7006 0100 0002 5830 3450

**MIKE KREIDLER**  
Insurance Commissioner

By 

Delia M. Zebroski  
Service of Process Coordinator

**Original to:**

M Joseph Sloan, Assistant City Atty  
Office of City Attorney  
City of Tacoma  
P.O. Box 11007  
Tacoma WA 98411

**Copy to:**

Specialty Surplus Insurance Company  
1 Kemper Drive  
Long Grove IL 60049-0001

Tracker ID 882

01/16/2007

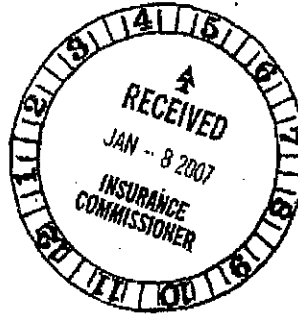
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KEMPER CLAIM DEPT

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FILED  
IN PIERCE COUNTY SUPERIOR COURT

A.M. JAN 05 2007 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

THE CITY TACOMA, a municipal  
Corporation, of the state of Washington,

Plaintiff,

v.

CLARENDON AMERICA INSURANCE  
COMPANY, a Delaware corporation,  
and SPECIALTY SURPLUS INSURANCE  
COMPANY, an Illinois corporation,

Defendants.

07 2 04167 8

CAUSE NO.

SUMMONS

TO THE DEFENDANTS:

A lawsuit has been started against you in the above-entitled court by the City  
of Tacoma, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of  
which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by  
stating your defense in writing, and by serving a copy upon the undersigned attorney  
for the Plaintiff within 40 days after the service of this Summons, excluding the day of  
service, or a default judgment may be entered against you without notice. A default

COPY

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1 judgment is one where Plaintiff is entitled to what he asks for because you have not  
2 responded. If you serve a notice of appearance on the undersigned attorney, you  
3 are entitled to notice before a default judgment may be entered.


4 You may demand that the Plaintiff file this lawsuit with the court. If you do so,  
5 the demand must be in writing and must be served upon the person signing this  
6 summons. Within 14 days after you serve the demand, the Plaintiff must file this  
7 lawsuit with the court, or the service on you of this summons and complaint will be  
8 void.

9 If you wish to seek the advice of an attorney in this matter, you should do so  
10 promptly so that your written response, if any, may be served on time.

11 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules  
12 of the state of Washington.

13 DATED this 3rd day of January 2007.

14 ELIZABETH A. PAULI, City Attorney

15  
16   
17 M. JOSEPH SLOAN, WSBA# 13206  
18 Assistant City Attorney  
19 City of Tacoma  
20 PO Box 11007  
21 Tacoma, WA 98411

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FILED  
IN PIERCE COUNTY SUPERIOR COURT

A.M. JAN 08 2007 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

THE CITY TACOMA, a municipal  
Corporation, of the state of Washington,

07 2 04167 8

Plaintiff,

CAUSE NO.

v.

CLARENDON AMERICA INSURANCE  
COMPANY, a Delaware corporation,  
and SPECIALTY SURPLUS INSURANCE  
COMPANY, an Illinois corporation,

COMPLAINT TO  
RECOVER BENEFITS  
OF COVERAGE, FOR  
BREACH OF CONTRACT,  
AND DAMAGES

Defendants.

COMES NOW the Plaintiff City of Tacoma, represented by and through  
Elizabeth A. Pauli, Tacoma City Attorney, and M. Joseph Sloan, Assistant City  
Attorney, and herein for cause of action, alleges against the Defendants and each  
of them as follows:

I. JURISDICTION

1.1. Now and for all relevant times herein stated, the Plaintiff City of  
Tacoma (hereinafter referred to as the "City"), is a municipal corporation created  
under the laws of the state of Washington, located in Pierce County.

1.2. Now and for all relevant times herein stated, Defendant, Clarendon  
America Insurance Company (hereinafter referred to as "Clarendon"), is a

COMPLAINT - 1

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corporation, created under the laws of the state of Delaware, doing business in  
Pierce County, state of Washington, whose principle of business is in New York  
City, state of New York.

1.3. Now and for all relevant times herein stated, Defendant, Specialty  
Surplus Insurance Company ("Specialty"), is a corporation created under the laws  
of the state of Illinois, doing business in Pierce County, state of Washington,  
whose principle place of business is in Scottsdale, state of Arizona.

## II. VENUE

2.1. Now and for all relevant times herein stated, the events and  
transactions as a result of which Tacoma's claims or causes of action arose, took  
place in Pierce County, state of Washington.

## III. STATEMENT OF FACTS

3.1. On or about August 2, 2001, Defendant, Specialty, issued to the City  
a policy of liability insurance for the policy period July 31, 2001, to August 12,  
2002. The policy provided insurance coverage for damages arising from personal  
injury, property damage, and public officials' errors and omissions liability. The  
policy also provided coverage for payment of the City's cost of defending against  
such claims.

3.2. On or about August 13, 2002, Defendant, Clarendon, issued to the  
City a policy of liability insurance for the policy period August 13, 2002, to August  
12, 2003. This policy provided insurance coverage for bodily injury, property

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1 damage, personal injury, public official's errors and omissions, and expenses  
2 incurred in the defense against such claims.

3 3.3. The City made timely tenders of its defense of the claims against the  
4 City in the matter of Haley C. Brame, et al. v. City of Tacoma, et al., Pierce County  
5 Cause No. 04-2-00712-7 (hereinafter referred to as the "Brame matter") to  
6 Specialty and Clarendon, and complied with all conditions imposed by the policies  
7 issued by Specialty and Clarendon.

8 3.4. Both Specialty and Clarendon confirmed coverage for damages  
9 arising from the Brame matter and participated in the settlement of the Brame  
10 matter by making payments under the indemnity provisions of their respective  
11 policies.  
12

13 3.5. On or about October 18, 2005, Specialty entered into a Settlement  
14 Agreement and Release with the City (hereinafter referred to as the "Settlement  
15 Agreement") in which Specialty agreed to pay in addition to its contribution into the  
16 settlement of the Brame matter, one half (1/2) of the City's defense costs, fees,  
17 and expenses incurred by the City in its defense against the Brame matter.  
18 Though the City has requested payment of its defense expenses, has submitted  
19 invoices reflecting necessary and reasonable expenses incurred and made  
20 requests for payment, Specialty has failed to pay its portion of the City's defense  
21 expenses.  
22

23 3.6. On or about December 2, 2005, Clarendon, through its agent, TIG  
24 Indemnity Company, agreed to reimburse the City all of the City's legal expenses  
25 through October 26, 2005, and fifty percent (50%) of the legal expenses thereafter  
26  
27

28 COMPLAINT - 3  
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(hereinafter referred to a "Letter Agreement"). Clarendon paid some of the City's claim expenses, including legal expenses for the years 2003 through September 9, 2005; however, the balance of the invoices submitted to Clarendon for reimbursement of its agreed upon proportional share of the defense expenses incurred by the City have not been paid, notwithstanding the City's multiple demands for payment.

3.7. Though Specialty and Clarendon confirmed coverage, accepted the City's tender of the claims, and made payments in settlement of the Brame matter under the indemnification provisions of their respective policies, neither Specialty nor Clarendon have made full payment of their share of the City's costs or expenses incurred in defense of the Brame matter, as required by their respective policies and subsequent agreements pertaining to the payment of defense expenses. Furthermore, Specialty and Clarendon have failed to provide any justification or reason why payment is being withheld.

#### IV. FIRST CAUSE OF ACTION-DECLARATORY RELIEF

4.1. The City, as its first cause of action, re-alleges paragraphs 1.1 through 3.7 of its Complaint, as if fully set forth herein, and seeks the Court's Declaration as to the following:

4.2. Specialty, by operation of the Settlement Agreement, is obligated to reimburse the City one-half of the reasonable defense fees, costs, and expenses incurred by the City on behalf of the Tacoma Defendants in the Brame matter.

COMPLAINT - 4

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1 4.3. Clarendon, by operation of its policy of insurance issued to the City,  
2 is obligated to pay all of the City's claims expenses, as defined by its policy,  
3 including the cost of claims investigation, claims litigation, any interest required by  
4 law on awards or judgments, and legal expenses allocated to the Brame matter.

5 4.4. Specifically as to legal expenses, Clarendon by operation of its Letter  
6 Agreement through its agent, TIG Indemnity Company, is obligated to reimburse  
7 the City one hundred percent (100%) of the City's legal expenses allocated to the  
8 Brame matter incurred by the City through October 26, 2005, and fifty percent  
9 (50%) of the legal expenses allocated to the Brame matter thereafter.  
10

11 4.5. The City has provided adequate documentation of its defense  
12 expenses, fees, costs, claims expenses, and legal expenses to warrant  
13 reimbursement of these expenses by Clarendon and Specialty; however,  
14 Clarendon and Specialty have not provided an explanation as to why payment has  
15 not be made, and therefore, payment has been unlawfully withheld by them, in  
16 violation of RCW 48.30 and WAC 284-30-330.  
17

18  
19 V. SECOND CAUSE OF ACTION – BREACH OF CONTRACT

20 5.5. The City, as its second cause of action, re-alleges paragraphs 1.1  
21 through 3.7 of its Complaint, as if fully set forth herein.  
22

23 5.6. Specialty was obligated by the Settlement Agreement to pay the  
24 City's defense fees, costs, and expenses.  
25  
26  
27

28  
29 COMPLAINT - 5

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1           5.7. The City has provided the appropriate proof of such expenses in the  
2 form of invoices, has requested payment, and Specialty has failed to reimburse  
3 the City for these expenses as required by the Settlement Agreement.

4           5.8. As the proximate result of the breach of the Settlement Agreement  
5 by Specialty, the City has incurred damages, the extent of which will be proven at  
6 trial.

7           5.9. Clarendon was obligated by its Letter Agreement to pay one hundred  
8 percent (100%) of the City's legal expenses incurred until October 26, 2005, and  
9 fifty percent (50%) of the legal expenses incurred by the City thereafter.  
10 Clarendon was obligated by its policy of insurance to pay one hundred percent  
11 (100%) of the claims expense.  
12

13           5.10. The City has submitted proof of its claim and has requested payment  
14 from Clarendon; however, Clarendon has only made partial reimbursement of the  
15 litigation and claim expenses.  
16

17           5.11. Clarendon has breached its obligations under both the Letter  
18 Agreement and insurance policy by failing to reimburse the City for all of the claim  
19 and litigation expenses Clarendon was obligated to pay under the Letter  
20 Agreement and policy of insurance.

21           5.12. As a proximate result of Clarendon's breach of its obligations to the  
22 City, the City has incurred damages, the extent of which will be proven at trial.  
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COMPLAINT - 6

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VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff City of Tacoma prays for judgment against the Defendants and each of them as follows:

6.1. For Declaratory Judgment, that the Defendants and each of them are obligated by their policies of insurance, Settlement Agreement, and Letter Agreement, to pay all of the Plaintiff's defense expenses, costs, claims expenses, and litigation expenses according to proof;

6.2. For Judgment for the total amount of the Plaintiff's defense expenses, costs, claims expenses, and litigation expenses according to proof;


6.3. For prejudgment interest;

6.4. For attorney's fee and costs;

6.5. For such other and further relief as the Court deems just and equitable.

Dated this 3rd day of January, 2007.

ELIZABETH A. PAULI, City Attorney

  
M. Joseph Sloan, WSBA No. 13206  
Assistant City Attorney

COMPLAINT - 7

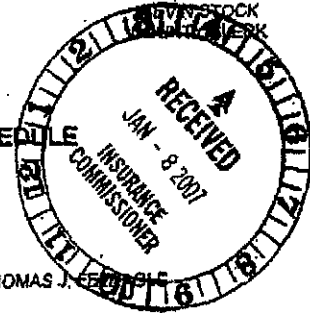
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(253) 502-8348

E-FILED  
IN COUNTY CLERKS OFFICE  
PIERCE COUNTY, WASHINGTONIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

January 05 2007 3:20 PM

No. 07-2-04167-8

## ORDER SETTING CASE SCHEDULE

Type of Case: COM  
Track Assignment: Expedited  
Assigned Department: 15 - Judge THOMAS J. FELNAGLE  
Docket Code: ORSCS

Confirmation of Service	01/19/07
Confirmation of Joinder of Parties, Claims and Defenses	03/02/07
Jury Demand	03/09/07
Status Conference (Contact Court for Specific Date)	Week Of 03/16/07
Settlement Conference Date with Judge/Commissioner BRIAN TOLLEFSON (See PCLR 3(c) 2(b) & 94.04 (f))	03/16/07
Plaintiffs Disclosure of Primary Witnesses	03/30/07
Defendants Disclosure of Primary Witnesses	04/20/07
Disclosure of Rebuttal Witnesses	05/04/07
Deadline for Filing Motion to Adjust Trial Date	05/18/07
Discovery Cutoff	05/25/07
Exchange of Witness and Exhibit Lists and Documentary Exhibits	06/01/07
Deadline for Hearing Dispositive Pretrial Motions	06/08/07
Joint Statement of Evidence	06/08/07
Settlement Conference (To be held)	Week Of 06/15/07
Pretrial Conference (Contact Court for Specific Date)	Week Of 06/29/07
Trial	07/11/07 9:30

Unless otherwise instructed, ALL Attorneys/Parties shall report to the trial court at 9:00 AM on the date of trial.

## NOTICE TO PLAINTIFF/PETITIONER

If the case has been filed, the plaintiff shall serve a copy of the Case Schedule on the defendant(s) with the summons and complaint/petition. Provided that in those cases where service is by publication the plaintiff shall serve the Case Schedule within five (5) court days of service of the defendant's first response/appearance. If the case has not been filed, but an initial pleading is served, the Case Schedule shall be served within five (5) court days of filing. See PCLR 1.

## NOTICE TO ALL PARTIES

All attorneys and parties shall make themselves familiar with the Pierce County Local Rules, particularly those relating to case scheduling. Compliance with the scheduling rules is mandatory and failure to comply shall result in sanctions appropriate to the violation. If a statement of arbitrability is filed, PCLR 1 does not apply while the case is in arbitration.

DATED: January 5, 2007

Judge THOMAS J. FELNAGLE  
Department 15

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01/16/2007

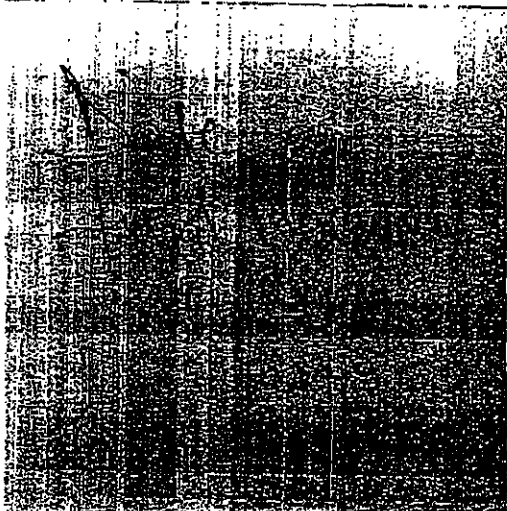
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KEMPER CLAIM DEPT

847 320 5765 → 913124668001

NO.844

0013



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**ISSUED AT OLYMPIA, WASHINGTON:** January 8, 2007

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Certification No.: 7006 0100 0002 5830 3450

**MIKE KREIDLER**  
Insurance Commissioner

By

  
Delia M. Zebroski  
Service of Process Coordinator

**Original to:**

M Joseph Sloan, Assistant City Atty  
Office of City Attorney  
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**Copy to:**

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